

FOIA request from Gary Macfarlane, Friends of the Clearwater, via Scoping Comments (6/27/2016) on the Blue Ribbon Test Drilling and Rebel/Beat Street Exploration projects on the NP-CW National Forest

Please send us a copy of the plan of operations and any other documents submitted by the applicant for this proposal. If necessary, this a request for those documents submitted under the Freedom of Information Act.

We also formally request a fee waiver for all search and duplication fees under the FOIA regulations [5 U.S.C. Sec. 552(a)(4)(A)]. The organization "Friends of the Clearwater" is a tax-exempt, non-profit organization and will derive no commercial benefit from this FOIA.

The information requested will benefit the citizens of the United States and is for the purpose of public education and to encourage public debate on important policy issues. The requested information will be made available to the public through the Friends of the Clearwater office in Moscow, ID. University students, grassroots conservationists, journalists, scientists, and the general public use our office. Information given to the Friends of the Clearwater through the FOIA in the past has been used in press conferences and releases, media interviews, publications including our newsletter and those of other groups, and reaches a significant number of individuals nationwide.

The language of the FOIA clearly indicates that Congress intended fees not to be a barrier to private individuals or public interest organizations seeking access to government records. In addition, the legislative history of the FOIA fee waiver language indicates that Congress intended a liberal interpretation of the phrase "Primarily benefiting the public." This suggests that all fees be waived whenever the release of information contributes to public debate on important policy issues. This has been affirmed by the US Court of Appeals for the District of Columbia, in *Better Government Association v. Department of State*, 780 F. 2d 86 (D.C. Cir., 1986). In that case, the Court found that under the FOIA, Congress had explicitly recognized the need for non-profit organizations to have free access to government documents and that government agencies cannot impair this free access by charging duplication or search for FOIA information requests (*Id.* at 89). See also *Judicial Watch v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003).

In considering whether Friends of the Clearwater meets the fee-waiver criteria, it is imperative that the USFS remember that FOIA carries a presumption of disclosure and that the fee-waiver amendments of 1986 were designed specifically to allow non-profit, public interest groups such as Friends of the Clearwater access to government documents without the payment of fees. As stated by one Senator, "[A]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information . . ." 132 Cong. Rec. S. 14298 (statement of Sen. Leahy). In interpreting this amendment, the Ninth Circuit has stated that the amended statute "is to be liberally construed in favor of waivers for noncommercial requesters." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (citing Sen. Leahy). The Ninth Circuit has likewise explicitly pointed out that the amendment's main purpose was "to remove the roadblocks and technicalities, which have been used by various Federal agencies to deny waivers or reductions of fees under the FOIA." *Id.*

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